



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re application of:	Jonathan Stanley Harold Denyer et al.	Docket No.:	102199-201
Serial No.:	09/930,582	Art Unit:	3731
Filed:	August 15, 2001	Examiner:	Michael G. Mendoza
Assignee:	Respironics, Inc.		
Title:	CONTROLLING DRUG DELIVERY APPARATUS		

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Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Dear Sir:

STATE OF CONNECTICUT)
) ss.
COUNTY OF NEW HAVEN)

AFFIDAVIT OF MICHAEL K. KINNEY

I, MICHAEL K. KINNEY, being duly sworn on oath, do hereby say as follows:

1. I am a registered patent attorney, Registration No. 42,740.
2. For all times relevant to this declaration, I was employed as an associate attorney at the law firm of WIGGIN and DANA, LLP, One Century Tower, 265 Church Street, New Haven, CT 06510. I currently reside at 736 Orange Street, New Haven, Connecticut 06511.
3. On August 15, 2001, I caused the above-identified patent application (“the ‘582 Application”) to be filed with the U.S. Patent and Trademark Office. As noted in the application transmittal papers signed by me, the ‘582 Application was a continuation-in-part application claiming the benefit of prior U.S. Patent Application Ser. No. 09/781,610, filed February 12, 2001 (“the ‘610 Application”). The ‘610 Application, in turn, claimed priority to a UK application for patent, No. GB003197.1, filed February 11, 2000, and thus a claim for priority to this UK application also was made in the ‘582 Application.
4. At the time of filing the ‘582 Application, I was advised by the UK patent attorney on whose client’s behalf the ‘610 Application and the ‘582 Application were filed, that

the newly-added subject matter being presented in the continuation-in-part '582 Application had not been made the subject of, or had otherwise been disclosed in, any prior foreign patent application, a fact which to my knowledge was true and remains true.

5. Based on this information from the UK patent attorney, I prepared, signed and filed along with the '582 Application a "Nonpublication Request Under 35 U.S.C. 122(b)(2)(B)(i)," in which I certified "that the invention disclosed in the attached application **has not and will not be** the subject of an application filed in another country, or under a multilateral agreement, that requires publication after eighteen months after filing" (emphasis in original).

6. It was my understanding and belief at the time that this was a proper and correct certification, because, even though the '582 Application claimed priority to an earlier-filed UK application (the UK being a country which publishes patent applications after 18 months), the new subject matter of the '582 Application was not in fact contained in that UK priority application nor was the subject of any other prior filed foreign application. I recognized at the time that the subject matter of the '582 Application which was common to the parent '610 Application was, of course, the subject of an earlier-filed UK application (i.e., the UK priority application). However, it was my understanding and belief at the time that this was not material to the propriety of a request for nonpublication for the '582 Application. This was because (1) as noted, the new subject matter of the '582 Application had not in fact been disclosed in a previously filed application, and (2) the subject matter that is common between the '582 Application and the parent '610 Application was in any event eventually going to be the subject of a published U.S. application by reason of publication of the '610 Application (which in fact occurred on September 20, 2001, Publication No. 2001-0022279 A1).

7. It has been called to my attention that it is possible, although far from certain, that it may not have been appropriate to file a nonpublication request in the '582 Application and for me to have certified "that the invention disclosed in the attached application has not and will not be the subject of an application filed in another country, or under a multilateral agreement, that requires publication after eighteen months after filing," in view of the fact that at least some of the subject matter of the '582 Application (namely, that common to its parent '610 Application) had been the subject of a prior filed foreign patent application (namely, the UK priority application). It is my understanding that, because of this uncertainty, a

rescission of the nonpublication request is being filed by the current assignee of the '582 Application.

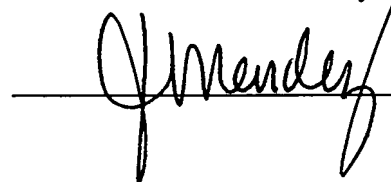
8. I do not know if the nonpublication request that I filed in the '582 Application would in fact be deemed by the PTO to have been inappropriate at the time in these circumstances, or whether the certification that I made and signed would in fact be deemed by the PTO to have been incorrect at the time in these circumstances. Indeed, it remains my personal belief that I proceeded properly in these respects. Nevertheless, if and to the extent that it might turn out that I was incorrect in any of these respects, or that my actions might be subject to question, I can and do hereby state categorically that the certification that I made and signed and the nonpublication request that I filed in the '582 Application were made and filed in good faith, for no improper purpose, with no knowledge, information or belief that any fact asserted, representation or statement made was false, fictitious or fraudulent, and without any intent whatever to deceive or mislead the PTO or the public.

Date: 7/13/05


Michael K. Kinney, Reg. No. 42,740

Sworn to and subscribed before me, a Notary Public, by the person known by me to be, and further identified to me as, Michael K. Kinney, this 13 day of July, 2005.

(SEAL)



JACQUELINE MENDEZ
NOTARY PUBLIC
MY COMMISSION EXPIRES MAY 31, 2010